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Attorneys for Debtors and Debtors-in-Possession

**UNITED STATES BANKRUPTCY COURT
 DISTRICT OF NEVADA**

In re:
 USA COMMERCIAL MORTGAGE COMPANY,
 Debtor.

Case No. BK-S-06-10725 LBR
 Case No. BK-S-06-10726 LBR
 Case No. BK-S-06-10727 LBR
 Case No. BK-S-06-10728 LBR
 Case No. BK-S-06-10729 LBR

In re:
 USA CAPITAL REALTY ADVISORS, LLC,
 Debtor.

Chapter 11

In re:
 USA CAPITAL DIVERSIFIED TRUST DEED FUND,
 LLC,
 Debtor.

Jointly Administered Under
 Case No. BK-S-06-10725 LBR

In re:
 USA CAPITAL FIRST TRUST DEED FUND, LLC,
 Debtor.

In re:
 USA SECURITIES, LLC,
 Debtor.

**MOTION TO INCREASE THE DEBTORS'
 180-DAY EXCLUSIVE PERIOD TO
 CONFIRM PLANS OF
 REORGANIZATION TO
 DECEMBER 31, 2006
 (AFFECTS ALL DEBTORS)**

Affects:

- ☒ All Debtors
- ☐ USA Commercial Mortgage Company
- ☐ USA Securities, LLC
- ☐ USA Capital Realty Advisors, LLC
- ☐ USA Capital Diversified Trust Deed Fund, LLC
- ☐ USA Capital First Trust Deed Fund, LLC

Date: OST PENDING
 Time: OST PENDING

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1 USA Commercial Mortgage Company (“USACM”), on behalf of itself and its affiliated
 2 debtors, which are USA Securities, LLC (“Securities”), USA Capital Realty Advisors, LLC
 3 (“Realty”), USA Capital Diversified Trust Deed Fund, LLC (“Diversified Fund”), and USA
 4 Capital First Trust Deed Fund, LLC (“First Deed Fund”) (collectively, the “Debtors”), hereby
 5 move the Court for an order under 11 U.S.C. § 1121(d) to increase the 180-day period under 11
 6 U.S.C. § 1121(c)(3) that the Debtors have to confirm a plan of reorganization. In support of this
 7 Motion, Debtors represent as follows.

8 POINTS AND AUTHORITIES

9 FACTUAL BACKGROUND

10 1. The Debtors filed their petitions for relief under chapter 11 of the Bankruptcy Code
 11 on April 13, 2006.

12 2. Mesirow Financial Interim Management, LLC (“Mesirow”) and Thomas J. Allison
 13 (“Allison”) were installed as the new, independent management for each of the Debtors, and now
 14 Allison serves as the sole Manager of the four Debtors who are limited liability companies
 15 (Securities, Realty, Diversified Fund, and First Deed Fund), and as the president of the corporate
 16 debtor USACM, with full authority to oversee the restructuring and reorganization of the Debtors’
 17 unified business enterprise.

18 3. As of the bankruptcy petition date, USACM was the servicer for a loan portfolio of
 19 approximately 115 commercial mortgage loans (the “Loan Portfolio”). A substantial portion of
 20 the loans in the Loan Portfolio have been divided into fractionalized shares that are held by many
 21 different noteholders. The noteholders of the loans in the Loan Portfolio fall into three main
 22 categories: (1) Diversified Fund holds a 100% interest in some of the loans, and only
 23 fractionalized shares in some others; (2) First Deed Fund holds a 100% interest in some of the
 24 loans, and only fractionalized shares in some others; and (3) various groups of individual investors
 25 hold 100% interests in some of the loans, and only fractionalized shares in many others. Of the
 26 approximately 115 loans in the Loan Portfolio, approximately 20 are owned 100% by Diversified
 27 Fund and/or First Deed Fund (collectively, the “Funds”), approximately 30 others are owned
 28 100% by various groups of investors not including the Funds, and the remaining approximately 50

1 loans are held in fractional shares by one or both of the Funds along with various groups of
2 individual investors.

3 4. There are approximately 1,900 members owning the membership interests in the
4 Diversified Fund, approximately 1,300 members owning the membership interests in the First
5 Deed Fund, and approximately 3,600 direct investors (other than the Funds) who own fractional
6 shares of various loans in the Loan Portfolio, with substantial overlap among the members of the
7 Funds and the individual investors holding direct investments in loans within the Loan Portfolio.
8 In other words, a substantial number of the 3,600 individual investors who directly hold the
9 portions of the Loan Portfolio that are not owned by either of the Funds are the same individuals
10 who also invested indirectly in the Loan Portfolio by purchasing membership interests in one or
11 both of the Funds.

12 5. The Office of the United States Trustee appointed four (4) separate official
13 committees in these cases, as follows:

14 a. Official Committee of Unsecured Creditors of USA Commercial Mortgage
15 Company;

16 b. Official Committee of Holders of Executory Contract Rights of USA
17 Commercial Mortgage Company;

18 c. the Official Committee of Equity Security Holders of USA Capital
19 Diversified Trust Deed Fund, LLC; and

20 d. the Official Committee of Equity Security Holders of USA Capital First
21 Trust Deed Fund, LLC.

22 6. The Debtors' new management has focused on three issues:

23 a. Reconstituting the Debtors' accounting system so that it accurately reflects
24 past and current collections and disbursement of funds;

25 b. Collection of past due interest and principal from borrowers to maximize
26 the recovery from the loan portfolio; and
27
28

1 c. Working with the four (4) official committees (i) to find potential buyers or
2 partners to fund a plan of reorganization and (ii) to negotiate and prepare a consensual plan of
3 reorganization.

4 7. The Debtors have a working accounting system and are working on collection of
5 loans. There is a potential buyer for a substantial portion of the Debtors' assets. The Debtor has
6 prepared a plan of reorganization and a disclosure statement for filing. The plan does not have the
7 consent of the official committees and the disclosure statement will be subject to revision to reflect
8 issues that are important to the official committees and parties in interest.

9 8. The Debtors' 120 day exclusive period to file a plan of reorganization was
10 extended by this Court with the consent of the four (4) official committees to September 15, 2006.
11 Unless the four (4) official committees consent and the Court extends this exclusive period, the
12 Debtors will file their plan of reorganization and disclosure statement on September 15, 2006.

13 9. The 180 day exclusive period to obtain acceptance of the proposed plan of
14 reorganization by each class of claims or interests that is impaired under the plan will expire on or
15 about October 13, 2006. There is no possibility that the Debtors will be able to obtain approval of
16 the disclosure statement and solicit votes by October 13, 2006. The process will take, at least 90
17 days and, in a case this size, more likely an additional 120 days.

18 10. Based on these factors, the Debtors request this Court grant them, at least, until
19 December 31, 2006 the exclusive right to confirm a plan of reorganization conditioned on (a) the
20 Debtors filing of a plan of reorganization and disclosure statement by September 15, 2006 or such
21 later date as the Court allows with the consent of the four (4) official committees and (b) the
22 approval of the Debtors' disclosure statement by November 30, 2006. The Debtors are reserving
23 the right to request a further extension of the 180-day exclusivity if the circumstances warrant it.

24 **MEMORANDUM OF LAW**

25 Bankruptcy Code §1121 provides for a period time when only the debtor in possession can
26 file a plan of reorganization. Subsection (c) provides:

27 (c) Any party in interest, including the debtor, the trustee, a creditors' committee,
28 an equity security holders' committee, a creditor, an equity security holder, or any
indenture trustee, may file a plan if and only if—

- (1) a trustee has been appointed under this chapter;
- (2) the debtor has not filed a plan before 120 days after the date of the order for relief under this chapter; or
- (3) the debtor has not filed a plan that has been accepted, before 180 days after the date of the order for relief under this chapter, by each class of claims or interests that is impaired under the plan.

Subsection (d) provides:

(d)(1) Subject to paragraph (2), on request of a party in interest made within the respective periods specified in subsections (b) and (c) of this section and after notice and a hearing, the court may for cause reduce or increase the 120- day period or the 180-day period referred to in this section.

(2)(A) The 120-day period specified in paragraph (1) may not be extended beyond a date that is 18 months after the date of the order for relief under this chapter.

(B) The 180-day period specified in paragraph (1) may not be extended beyond a date that is 20 months after the date of the order for relief under this chapter.

“Cause” is not defined by the Code. Courts have struggled with the definition. One district court stated:

A review of the case law indicates that, although there are a large number of potential factors that have been identified by various courts as being pertinent to a determination of whether cause has been shown, many courts have chosen to rely upon relatively few factors --- albeit different ones --- to determine whether the necessary cause exists to alter the statutory time period set forth in 11 U.S.C. § 1121. See, e.g., In re Amko Plastics, Inc., 197 B.R. at 77 (relying solely upon the debtor's rapid turn-around effort, the lack of prejudice to the creditors, and the absence of an impermissible motivation for the debtor's request for an extension, to conclude that the requisite cause had been shown); In the Matter of Lake in the Woods, 10 B.R. 338, 345 (E.D.Mich.1981) (relying solely upon the legislative history of § 1121(d) to conclude that the requisite cause had not been shown). Furthermore, it appears that the choice of pertinent factors depends largely upon the factual nature of the case before the court. See In re Amko Plastics, Inc., 197 B.R. at 76 (“We are of the opinion ... that the debate by the parties regarding size and complexity is beside the point and does not fairly deal with the thrust of the evidence. Different considerations should be applied in this case.”). Thus, a bankruptcy court faced with the issue of whether the necessary “cause” exists to extend the exclusivity period has a high degree of flexibility in fashioning the appropriate test to be applied, and is not required to apply any particular set of factors, or number of factors, in every case. See In re Public Serv. Co. of New Hampshire, 88 B.R. 521, 534 (Bankr.D.N.H.1988) (“the legislative intent [behind § 1121(d)] has been construed to leave the question [of cause] to the reorganization court in the exercise of its discretion and to promote maximum flexibility to suit various types of reorganization proceedings”).

1 *In re Elder-Beerman Stores Corp.*, 1997 WL 1774880 (S.D.Ohio 1997). Another Court stated as
2 follows:

3 The Code does not define "cause" for reducing the exclusivity period. Courts have
4 specified the following factors for determining whether to terminate the exclusivity
5 period: 1) the debtor's use of exclusivity period to force creditors to accept an
6 unsatisfactory or unconfirmable plan; 2) the debtor's delay in filing a plan; 3) gross
mismanagement of the debtor's operations; and 4) "acrimonious relations" between
the debtor's principals.

7 *In re Situation Management Systems, Inc.*, 252 B.R. 859, 863 (Bankr. D.Mass. 2000)
8 (citations omitted).

9 In this case, the Debtors and the four Official Committees have worked diligently to
10 prepare a joint plan and to avoid the potential expense, litigation and delay which would be caused
11 by competing plans. While there is no guarantee of successful conclusion of the joint plan process,
12 a continuance of exclusivity would provide the time for the process to be completed. The facts are
13 that: 1) the Debtors are not using exclusivity to force creditors to accept anything; 2) the Debtors
14 have not delayed filing a plan except to consummate negotiations with the Committees; 3) there is
15 no allegation of mismanagement by the Debtors' current management; and 4) there is no problem
16 between Debtors' principals delaying a plan.

17 CONCLUSION

18 WHEREFORE, the Debtors respectfully request that the Court ratify the approval of the
19 Stipulated Order and extend the Debtors' exclusivity period for obtaining acceptance of a plan
20 from each class of claims or interests that is impaired under the plan to, at least, December 31,
21 2006 conditioned on (a) the Debtors filing of a plan of reorganization and disclosure statement by
22 September 15, 2006 or such later date as the Court allows with the consent of the four (4) official

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committees, and (b) the approval of the Debtors' disclosure statement by November 30, 2006.

Dated: September 15, 2006

/s/ Jeanette E. McPherson

Lenard E. Schwartz, Esq.

Jeanette E. McPherson, Esq.

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